

4. Those parties urging that funding be limited to only a single residential line expressed concern that the new CHCF under HB 95-1335 would be substantially larger than the current CHCF. At this time, the Commission is of the opinion that the CHCF under HB 95-1335 will be larger than the current CHCF, mainly because USWC, which currently does not draw from the CHCF, will be eligible to draw from the new CHCF. However, the Commission does not have sufficient information in this docket to make a reasonable assessment of the size of the new CHCF. If the size of the fund becomes a burden to customers of telecommunications providers making payments into the fund, there is nothing to prevent the Commission from reconsidering this issue. However, without hard evidence, the Commission is unwilling to make such a drastic change in the application of the CHCF.

E. "Basic Service."

1. There was not consensus by the Working Group on the definition of "basic service" to which Colorado High Cost funding should be applied. Most parties filing comments proposed that the basic service standards expressed in Rule 17.1 of the Commission's *Rules Regulating Telecommunications Service Providers and Telephone Utilities*, 4 CCR 723-2, plus access to 911 service, should be used as the definition of "basic service" for purposes of this rule. A few parties took the position that Rule 17.1 and access to 911 service do not include all of the requirements comprising basic service currently found in the Commission's rules. These parties recommended a definition of "basic services" that contained a laundry list of features, services and customer rights.

2. In HB 95-1335 the General Assembly defined "basic service" in very general terms:

Basic service is the availability of high quality, minimum elements of telecommunications services, as defined by the commission, at just, reasonable, and affordable rates to all people of the state of Colorado.

Section 40-15-502(2), C.R.S. As can be seen from the above definition, the General Assembly has delegated to the Commission the responsibility of defining what are "high quality, minimum elements of telecommunications services."

Throughout the Commission's current rules applicable to telecommunications services there are numerous functions, services and features that a basic local exchange service provider must provide and certain technical standards that it must meet in providing basic local exchange service. While Rule 17.1 contains some of these functions, services, features, and standards, it does not contain all of them. Thus, it would not be consistent with what the Commission currently considers "basic service" to limit basic service to Rule 17.1, plus 911 service. We also are rejecting the recommendation to include a laundry list of functions, services, features, and standards in the standards for "basic service".

3. We have not included a definition of "basic service" in the rules we adopt today. Instead, we have included a description of the standards encompassed in the concept of "basic service." Any description of the standards encompassed in the concept of "basic service" should include language indicating clearly that the concept of "basic service" is an evolving concept that will change with time. The description of the standards encompassed in the concept of "basic service" we

fashion in the rules adopted by this decision emphasizes that "basic service" is an evolving concept to be updated periodically, taking into consideration advances in telecommunications and information technologies and services. It recognizes that Rule 17.1 and 911 service, together with other elements, functions, services, and standards for quality service prescribed by the legislature by statute, or by this Commission by rule or order, comprise "basic service."

F. Payments into the Colorado High Cost Fund.

There also was not consensus on the issue of which providers should make payments into the CHCF. In § 40-15-502(3)(a), C.R.S., the General Assembly wrote with respect to universal basic service:

The Commission shall require the furtherance of universal basic service, toward the ultimate goal that basic service be available and affordable to all citizens of the state of Colorado.

The General Assembly concluded paragraph 40-15-502(3)(a) with the following empowerment to the Commission:

The commission shall have the authority to regulate providers of telecommunications services to the extent necessary to assure that universal basic service is provided to all consumers in the state at fair, just, and reasonable rates.

Again in § 40-15-502(5)(a), C.R.S., on universal service support mechanisms, the General Assembly wrote:

In order to accomplish the goals of universal basic service, universal access to advanced service, and any revision of the definition of basic service under subsection (2) of this section, the commission shall create a system of support mechanisms to assist in the provision of such services in high-cost areas.

In order to accomplish the above goals, the General Assembly wrote in § 40-15-502(5)(a):

These support mechanisms shall be funded equitably and on a nondiscriminatory, competitively neutral basis through assessments on all telecommunications service providers in Colorado

(Emphasis added.) The Commission views the above as a legislative mandate that **all** companies in Colorado providing intrastate telecommunications services must pay into the CHCF and as empowering the Commission to regulate such providers to the extent necessary to assure that **all such providers pay into the fund on an equitable, nondiscriminatory, and competitively neutral basis.** In light of the fact that the General Assembly used the word "all," we do not have discretion to exempt individual telecommunications providers or classes of telecommunications providers from paying into the CHCF.

1. Prior to the enactment of HB 95-1335, the Congress of the United States preempted states from regulating commercial mobile service and private mobile service in the two areas of entry and rates. *See* 47 U.S.C. § 332(c)(3). The Commission must look to federal law to determine whether wireless telecommunications providers utilizing the public switched network to provide intrastate telecommunications service would be exempt from HB 95-1335's mandate to pay into the CHCF. In 47 U.S.C. § 254(b), titled "Universal Service," Congress listed a number of universal service principles that the Federal-state Joint Board and the FCC are required to consider in designing policies for the preservation and advancement of universal service in the United States. One such principle is that: "**All**

providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service." (Emphasis added.) 47 U.S.C. § 254(b). That Congress meant to include all providers of telecommunications services, both interstate providers and intrastate providers, can be seen later in subsection 254(d), applicable to interstate providers, and subsection 254(f), applicable to intrastate providers. In subsection 254(d), Congress wrote:

Every telecommunications carrier that provides **interstate** telecommunications service shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission [FCC] to preserve and advance universal service.

(Emphasis added.) In subsection 254(f) Congress wrote the same language with respect to telecommunications carriers providing intrastate telecommunications services:

Every telecommunications carrier that provides **intrastate** telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State, to the preservation and advancement of universal service in that State.

(Emphasis added.) Earlier in Section 3 of the Federal Act, Congress defined the terms: "Telecommunications," "Telecommunications carrier" and "Telecommunications service." In defining "Telecommunications carrier" Congress exempted only aggregators of telecommunications services defined in 47 U.S.C. § 226, and delegated to the FCC discretion to determine whether the provision of fixed and mobile satellite services should be treated as common carriage. All other telecommunications carriers were included in the definition. Congress defined the term "Telecommunications service" in the following language:

The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to the public, **regardless of the facilities used.**

(Emphasis added.) It is clear to this Commission that all telecommunications carriers providing intrastate telecommunications service may be required by a state to pay into that state's fund for the advancement and promotion of universal service, so long as payments into the fund are "on an equitable and nondiscriminatory basis."

2. There also was not consensus on the issue of whether a service provider's payment into the CHCF should be calculated based on that service provider's intrastate retail revenues or based on both its intrastate retail revenues and interstate retail revenues if it also provided interstate telecommunications services.

Congress, in subsection 254(f) of the Federal Act, wrote:

Every telecommunications carrier that provides intrastate telecommunications services shall contribute, **on an equitable and nondiscriminatory basis**, in a manner determined by the State to the preservation and advancement of universal service in that State.

(Emphasis added.) Under the Federal Act, every carrier providing interstate telecommunications service is required to pay into the Federal Universal Service Fund. *See* 47 U.S.C. § 254(d). It would not be equitable for the interstate revenues of telecommunications carriers to support the Federal Universal Service Fund and also support, in part, this state's CHCF. Only intrastate retail revenues will be used as the basis for calculating payments into the CHCF. Until the new mechanism for making payments into the CHCF is ordered by this Commission, the current mechanism will

remain in effect. The rules we adopt today comply with the federal requirements of equity and nondiscrimination.

3. In the rules we adopt today, only the revenues associated with the sale of cable services identified in § 40-15-401(1)(a), C.R.S., will be exempt from assessment for the support of the CHCF. However, we have included in the CHCF rules a provision whereby a telecommunications service provider of other exempt services identified in Part 4 of Article 15 of Title 40, Colorado Revised Statutes, may petition for an alternate method of calculating revenues upon which payments may be calculated.

G. Provider of Last Resort.

1. Proposed Rule 5 recommended by the Working Group was consensus, except for Rule 5.4.2 concerning notice to customers when a POLR applies to discontinue providing basic local exchange service and/or its designation as a POLR. *See* Attachment A to Decision No. C95-1304 in this docket or Appendix E to the November report of the Working Group for the rules on Provider of Last Resort. As we stated above, the proposed rules applicable to POLRs have been severed from the proposed rules applicable to the CHCF and will be adopted as a separate set of rules. *See* Attachment B to this decision. Inasmuch as Congress has placed the burden on states to designate common carriers as "Eligible Telecommunications Carriers" ("ETC") for purposes of the federal Universal Service Fund, we have incorporated corresponding designation provisions applicable to ETCs in the POLR rules.

2. With respect to the Working Group's Rule 5.4.2, there was consensus on part of Rule 5.4.2 and nonconsensus on part. All participants agreed that written notice should be mailed or delivered at least 30 days before the effective date of discontinuance to all presently served customers or subscribers, all interconnecting telecommunications providers, all boards of county commissioners of affected counties and all mayors of affected cities, towns and municipalities. Disagreement centered on the additional notice desired by certain participants. These participants recommended that additional notice should be given by publication for four consecutive weeks in a publication or publications distributed in the area certificated to the POLR.

3. We have elected to require a POLR which desires to relinquish its designation as a POLR and/or its basic local exchange service to give the additional notice recommended by certain participants of the Working Group.

4. The Commission, also, has added to the consensus rules on discontinuance of basic local exchange service and/or its designation as a POLR separate rules on relinquishment of universal service by ETCs under 47 U.S.C. § 214(e)(4). Notice to relinquish designation as an ETC will be the same as for POLRs.

H. Eligibility to Receive CHCF Support.

1. There also was not consensus on the issue of which service providers should be eligible to receive Colorado High Cost funding.

2. The Working Group forwarded three different recommendations relative to when a telecommunications service provider would be eligible to receive

CHCF support in a geographic high cost support area. One recommendation would require that a service provider be willing to provide basic service in a geographic support area and be designated a POLR in that area as a condition of receiving CHCF support. The second recommendation would require only that the service provider be willing to offer basic local exchange service in the geographic support area to all who request it. The third recommendation linked CHCF support to high cost customers, as opposed to high cost areas.

3. The rules adopted by this decision will require only that a telecommunications service provider (referred to in the rules as an "Eligible Provider") be certificated to provide basic local exchange service to all residential and business customers in a geographic support area in order to be eligible to receive Colorado High Cost funding. The service provider need not be, but also may be, designated a POLR. We read paragraph 40-15-502(5)(b), C.R.S. as delegating to the Commission discretion to require either that a service provider be certificated to provide basic service in a geographic support area or be certificated to provide basic service in a geographic support area and be designated a POLR in that same support area. We think our approach better advances HB 95-1335's goal of promoting competition in the provision of basic service--there may be service providers which may wish to be certificated to provide basic local exchange service in a geographic support area, but may not wish to be designated a POLR.

4. We have rejected, also, the third recommendation referred to above, i.e., that Colorado High Cost funding be targeted to high cost customers, as opposed

to high cost areas. HB 95-1335 speaks of promoting and advancing universal basic service in high cost areas. See, for example, § 40-15-502(5)(a), C.R.S., which provides in part:

In order to accomplish the goals of universal basic service, universal access to advanced service, and any revision of the definition of basic service under subsection (2) of this section, the commission shall create a system of support mechanisms to assist in the provision of such services in **high cost areas**. . . . For purposes of administering such support mechanisms, the commission shall divide the state into reasonably compact, competitively neutral **geographic support areas**. A provider's eligibility to receive support under the support mechanisms shall be conditioned upon the provider's offering basic service throughout an **entire support area**.

(Emphasis added.)

5. All of the parties agreed that the CHCF rules should be designed to prevent double recovery by Eligible Providers. However, some parties recommended that a provider should be required to demonstrate that it had removed all support, both explicit and implicit, for basic service from its prices for other services before it would be eligible to receive Colorado High Cost funding. We agree with the parties that the rules should be designed to prevent, to the extent possible, double recovery by Eligible Providers.

6. We have decided to address this issue in two ways: first, in the rules we adopt today an Eligible Provider will be required to present, in its application to be designated as an eligible provider, evidence that the funds to be received from the CHCF and other sources, together with local exchange service revenues will not exceed the **reasonable cost of providing local exchange service**. Second, one of the issues referred to the Task Force for consideration and recommendation

is a mechanism to account for the presence of, and removal of, internal subsidies. Together with the rules we adopt today, a properly designed mechanism should go a long way toward insuring against double recovery by Eligible Providers.

7. On the issue of resellers of basic service, the Commission has conformed its rules to the requirement in 47 U.S.C. § 214(e)(1)(E). That is, in order for a telecommunications carrier to be eligible to receive Federal Universal Service support, it must offer services under 47 U.S.C. § 254(c) either using its own facilities or a combination of its own facilities and resale of another carrier's services. Under the rules we adopt today, a pure reseller will not be eligible to receive either Colorado High Cost funding or Federal Universal Service funding. The facilities-based provider, reseller could be eligible to receive both.

I. Disclosure of Colorado High Cost Assessments and Funding on Customers Bills.

1. There also was not consensus on the issue of whether the CHCF assessment should be disclosed on the bills of customers of service providers making payments into the CHCF and on the bills of customers of service providers receiving payments from the CHCF.

2. A number of the Working Group participants recommended that the CHCF subsidy should be disclosed to both paying and receiving customers. Not unexpectedly, those participants receiving or anticipating receiving funds from the CHCF opposed this recommendation, while those participants anticipating

paying into the fund for the first time supported the recommendation. Strong arguments can be made supporting both points of view.

3. In support of disclosure it can be argued that customers have a right to know and should be informed of the various charges included in their bills, especially when those charges are the result of government action--such charges should not be hidden in a customer's overall total bill. Customers have a right to know when government action increases their cost for the benefit of other customers. Also, disclosure of the CHCF payment on customers' bills may act as a limitation of, or control against, ever increasing assessments.¹²

4. Equally persuasive arguments can be made supporting a decision not to disclose CHCF assessments and receipts. Arguments supporting not disclosing CHCF payments or subsidies on customers' bills are that the CHCF is simply a cost of doing business for service providers paying into the fund similar to other costs that are not itemized on customers' bills, such as wages, salaries, benefits, rents, insurance, income taxes, property taxes, etc.

5. Although the Commission has the discretion to require it, *City of Montrose v. Public Utilities Commission*, *supra* at 624-625, we have elected not to require telecommunications providers, both those providers making payments into the CHCF and those providers receiving payments from the CHCF, to disclose the subsidy amount on the bills of their customers. Since disclosure or non-disclosure

¹² This was the rationale of the Commission in requiring that municipal charges be disclosed on customers' bills. See City of Montrose v. Public Utilities Commission, 629 P.2d 619 (Colo. 1981).

has not been mandated in HB 95-1335, it is a matter within our discretion. *City of Montrose v. Public Utilities Commission, supra*. CHCF payments are assessed against the provider on the basis of intrastate retail revenues, and as such are simply a cost of doing business for the right to complete calls by interconnecting with the public switched network. The payments should not be itemized on a customer's bill any more than other costs of doing business are.

6. We are aware that certain subsidies, charges and taxes currently are disclosed to customers on the bills they receive, while other subsidies, charges and taxes are not. These disclosures are required either by statute or required by prior decisions of this Commission. Of necessity, the decision we make today will be consistent with some of those decisions and inconsistent with others.

However, this Commission is not bound by the judicial doctrine of *stare decisis*. *B & M Service, Inc., v. Public Utilities Commission* 163 Colo. 228, 429 P.2d 293 (1967). Also, when two equally reasonable courses of action are open to the Commission, it is within the Commission's discretion to select the appropriate alternative. *Colorado-Ute Electric Association v. Public Utilities Commission*, 760 P.2d 627, 641 (Colo. 1988). We are convinced that a decision either way would be legally defensible, but as a matter of policy we are of the opinion that not disclosing CHCF payments or receipts is the prudent course. This Commission should not do anything that may frustrate HB 95-1335's stated goal of promoting and advancing universal basic service to all people of the state.

III. ADOPTION OF RULES.

The *Rules Prescribing the Procedures for Administering the Colorado High Cost Fund*, attached to this decision as Attachment A and the *Rules Prescribing the Telecommunications Service Providers as Providers of Last Resort or as an Eligible Telecommunications Carrier*, attached to this decision as Attachment B, are consistent with the mandate of the General Assembly in HB 95-1335 that special rules and support mechanisms be adopted by this Commission to achieve the goal of ensuring the availability of universal basic local exchange service to all residents of the state at reasonable rates. The rules appended to this Decision as Attachment A and Attachment B are appropriate for adoption.

IV. ORDER

A. The Commission Orders That:

1. The *Rules Prescribing the Procedures for Administering the Colorado High Cost Fund*, attached hereto as Attachment A and the *Rules Prescribing the Procedures for Designating Telecommunications Service Providers as Providers of Last Resort or as an Eligible Telecommunications Carrier*, attached hereto as Attachment B are hereby adopted.

2. Rules 16, 17 and 19 of Part 2 of the *Cost Allocation Rules for Telecommunication Service and Telephone Utilities Providers*, 4 CCR 723-27, are hereby repealed.

3. There is hereby created the Colorado High Cost Fund Task Force discussed above in Part II.B of this decision. The Task Force shall consist of the following members, which shall be voting members: AT&T Communications of the Mountain States, AT&T Wireless Services, Colorado Independent Telephone Association, Colorado Office of Consumer Counsel, MCI Telecommunications Corporation, Staff of the Commission, TCI Communications, Inc., and US West Communications, Inc. The Staff of the Commission shall preside as the chair of the Task Force. Other persons, firms, corporations and associations may be granted membership in the Task Force upon petition to the Commission. The Task Force shall consider and make recommendations to the Commission on the issues set forth in Part II.B of this decision. The Task Force shall file with the Commission an interim report containing its recommendations on the issues set forth in Part II.B on or before October 31, 1996, and a final report on or before December 31, 1996.

4. This order adopting the rules attached hereto as Attachments A and B and repealing Rules 16, 17 and 19 contained in Attachment C hereto shall become effective 20 days following the Mailed Date of this decision in the absence of the filing of an application for rehearing, reargument, or reconsideration. In the event an application for rehearing, reargument, or reconsideration of this decision is timely filed, and in the absence of further order of this Commission, this order of adoption shall become final upon a Commission ruling denying any such application.

5. Within 20 days after final action of the Commission adopting the rules attached hereto as Attachments A and B, and repealing Rules 16, 17 and 19 contained in Attachment C hereto, the adopted and repealed rules shall be filed with the Secretary of State for publication in the next issue of the *Colorado Register* along with the opinion of the Colorado Attorney General regarding the constitutionality and legality of the adoption and repeal of the rules.

6. Within 20 days following the issuance by the Colorado Attorney General of her opinion on the adoption of the rules attached hereto as Attachments A and B, and the repeal of Rules 16, 17 and 19 contained in Attachment C hereto, the adopted and repealed rules shall be filed with the Office of Legislative Legal Services.

7. The 20-day period provided for in § 40-6-114(1), C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this order.

8. This Order is effective on its Mailed Date.

B. ADOPTED IN SPECIAL OPEN MEETING March 29, 1996.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

VED
APR 12 1996

Attachment A
Decision No. C96-352
DOCKET NO. 95R-558T
4 CCR 723-41
Page 1 of 20

THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF COLORADO

RULES PRESCRIBING THE
PROCEDURES FOR ADMINISTERING THE
COLORADO HIGH COST FUND

4 CCR 723-41

BASIS, PURPOSE AND STATUTORY AUTHORITY.

The basis and purpose of these rules is to provide procedures and regulations to administer the Colorado High Cost Fund (CHCF). The CHCF is intended to further the goal of ensuring that basic local exchange service shall be available and affordable throughout the State of Colorado. The CHCF allows providers to be reimbursed for the difference between the reasonable costs incurred in making basic service available to their customers within a rural, high-cost geographic support area and the price charged for such service. These Rules shall ensure that no local exchange provider receives funds from the CHCF or any other source that, together with local exchange service revenues, exceeds the reasonable cost of providing local exchange service. The CHCF shall be equitable, competitively neutral, and non-discriminatory in its funding, distribution, and administration. No provider shall gain a competitive advantage from the support obtained from this fund.

These Rules are clear and simple and can be understood by persons expected to comply with them. They do not conflict with any other provision of law. There are no duplicating or overlapping rules.

The Commission is authorized to promulgate rules generally by § 40-2-108 C.R.S., and specifically for telecommunications services by §§ 40-15-201 and 40-15-301 C.R.S. The

statutory authority for promulgating these Rules is further found in §§ 40-15-208, 40-15-501(2)(b) and (d), 40-15-502(2),(3), (4), (5) and (6), 40-15-503(2) C.R.S. By § 40-15-502(3)(a) C.R.S., the Commission has the authority to regulate all providers of telecommunications services to the extent necessary to assure that universal service is provided to all consumers in the State at fair, just, and reasonable rates.

Finally, these Rules are consistent with 47 U.S.C. 254.

RULE 4 CCR 723-41-1. APPLICABILITY. Part I of these rules contain the permanent provisions regulating the CHCF, and are applicable to all telecommunications service providers in Colorado. Part II of these rules contain the temporary provisions providing for the transition from the CHCF mechanism that was in effect prior to July 1, 1996 to the mechanisms in Part I. Part II is applicable to those providers that were Small LECs on or before July 1, 1996.

RULE 4 CCR 723-41-2. DEFINITIONS. The meaning of terms used within these Rules shall be consistent with their general usage in the telecommunications industry unless specifically defined by Colorado statute or this Rule. In addition to the definitions in this section, the statutory definitions apply. In the event the general usage of terms in the telecommunications industry or the definitions in this Rule conflict with statutory definitions, the statutory definitions control. As used in these Rules, unless the context indicates otherwise, the following definitions shall apply:

723-41-2.1 Access line. The connection of the end-user customer to the public switched network. This definition is not limited to wireline or to any other technology.

723-41-2.2 Administrator. The Commission, or a designee employed by the Commission pursuant to § 40-15-208 C.R.S. to perform the administrative functions of the CHCF under the direction of the Commission.

723-41-2.3 Average Schedule Small LECs. Small LECs who are average schedule companies as defined and used in 47 CFR 69.605 to 69.610.

723-41-2.4 Commission. The Colorado Public Utilities Commission.

723-41-2.5 Eligible Provider. A basic local exchange provider who has been designated by the Commission pursuant to Rule 8 to receive disbursements from the CHCF.

723-41-2.6 Geographic Area. A Commission-defined geographic unit usually smaller than an existing provider's wire center serving area.

723-41-2.7 Geographic Support Area. A Geographic Area where the Commission has determined that the furtherance of universal basic service requires that support be provided by the CHCF.

723-41-2.8 Provider of Last Resort (POLR). A Commission-designated telecommunications provider that carries the responsibility to offer basic local exchange service to all consumers who request it within a Geographic Area.

723-41-2.9 Proxy Cost. The estimate, produced by the use of factors, of the monthly recurring revenue requirement necessary to support the estimated investment per access line generated by the Proxy Cost Model.

723-41-2.10 Proxy Cost Model. A model which produces an estimate of the reasonable required level of investment per access line in a particular Geographic Area. The proxy telephone services or features assuming efficient engineering cost model produces an estimate of the required investment for a defined set of telephone services or features assuming efficient engineering and design criteria and deployment of current state-of-the-art technology using the current national local exchange network topology. The proxy cost model will not favor one technology over another, perhaps more efficient, technology.

723-41-2.11 Retail Revenues. For the purpose of this Rule, retail revenues are those revenues derived from the sale of intrastate telecommunications services which benefitted from interconnection with the public switched telecommunications network. They include only revenues received from end-users and not other telecommunications providers. A service is considered to have benefitted from interconnection with the public switched telecommunications network if it interconnects with the public switched telecommunications network in a manner that the user of the service can access the general public.

723-41-2.12 Small LEC. A local exchange carrier (LEC) or provider who was certified before July 1, 1996 and who serves a total of fewer than fifty thousand access lines in the State. This is a cumulative statewide total, and therefore not all basic local exchange providers that serve only rural exchanges of ten thousand or fewer access lines are Small LECs. Rural providers that serve a total of more than fifty thousand access lines statewide are not considered Small LECs.

723-41-2.13 Universal service. The goal that basic local exchange service be available and affordable to all citizens of the State of Colorado who desire it.

RULE 4 CCR 723-41-3. GENERAL. Toward the ultimate goal of universal service, the Colorado High Cost Fund shall be coordinated with the Federal Communications Commission (FCC) Universal Service Fund, (USF) found at 47 CFR 36.601 to 36.641 and any other Universal Service Support Mechanism that may be adopted by the FCC pursuant to 47 U.S.C. 254 of the Communications Act, as amended by Section 101 of the "Telecommunications Act of 1996".

RULE 4 CCR 723-41-4. TRANSITION.

723-41-4.1 The mechanism for making payments into the CHCF established in Rule 7 of Part I shall not take effect until further order of the Commission on or before July 1, 1997.

723-41-4.1.1 Until Rule 7 is effective, the mechanism for making payments into the CHCF established in Rules 18.6.2 through 18.6.5 of Part II of this Rule shall remain in effect.

723-41-4.1.2 After Rule 7 becomes effective, Rules 18.6.2 through 18.6.5 of Part II of this Rule are repealed.

723-41-4.2 Small LECs eligible, as of July 1, 1996, to draw from the CHCF established in Part II of 4 CCR 723-27 and now codified in Part II of this Rule, may only

continue to draw support in accordance Part II of this Rule until the first of the following three events occurs:

723-41-4.2.1 July 1, 2003; or

723-41-4.2.2 another provider holding an operating authority within the provider's service territory, pursuant to the Commission's Rules Regulating the Authority to Offer Local Exchange Telecommunications Services, 4 CCR-723-35, is found by the Commission to be eligible to receive support from the CHCF pursuant to Rule 8; or

723-41-4.2.3 the provider elects into the mechanism established pursuant to Part I of this Rule.

723-41-4.3 Part II of this Rule is repealed effective July 1, 2003.

RULE 4 CCR 723-41-5. SPECIFIC SERVICES AND FEATURES SUPPORTED BY THE CHCF. The services and features supported by the CHCF are an evolving level of telecommunications services established by the Commission and periodically updated under § 40-15-502(2) C.R.S., to take into account advances in telecommunications and information technologies and services. Until revised, the CHCF will support such services as are defined in Rule 17.1 of the Rules Regulating Telecommunications Service Providers and Telephone Utilities, 4 CCR 723-2, plus access to 911 service and such other elements, functions, services, standards or levels for quality of service, or criteria that are currently established pursuant to statute or Commission rule.

RULE 4 CCR 723-41-6. AFFORDABLE PRICE STANDARD FOR BASIC SERVICE. For the purpose of this Rule, the prices in effect for basic service, excluding outside base rate area zone charges, if any, in each Geographic Area on the effective date of this Rule shall be deemed affordable. Pursuant to § 40-15-502(3) C.R.S., a different level may be set by the Commission and designated as a benchmark price.

RULE 4 CCR 723-41-7. PAYMENTS INTO THE COLORADO HIGH COST FUND.

723-41-7.1 Each telecommunications service provider shall be assessed a percentage of the total CHCF equal to the provider's percentage of the total intrastate Retail Revenues.

723-41-7.1.1 Revenues associated with the sale of cable services identified in § 40-15-401(1)(a) C.R.S. shall not be considered when determining a provider's assessment.

723-41-7.1.2 A provider of a service, exempt from regulation pursuant to Part 4 of Article 15 of Title 40 Colorado Revised Statutes (C.R.S.), may apply for approval of an alternative method for calculating the revenues associated with the sale of that service. The Commission shall grant such application for disparate treatment if the Commission determines that such payment under Rule 7.1 would be discriminatory, inequitable and not in the public interest.

723-41-7.2 Process.

723-41-7.2.1 As part of its Annual Report filed pursuant to 4 CCR 723-1, Rule 25, each telecommunications service provider shall provide to the Commission, an audited accounting of its Retail Revenues for the previous calendar year.

723-41-7.2.2 The Administrator shall determine the annual assessment percentage appropriate for each telecommunications provider. The Commission shall issue an order establishing the appropriate assessment percentage for each telecommunications provider before the first day of each fiscal year.

723-41-7.2.3 The Administrator may increase each assessment by an amount necessary to compensate for uncollectible assessments. Such increase shall generally not exceed 5% of each month's assessment.

723-41-7.2.4 Monthly, the Administrator shall send to each provider a notice of the provider's net assessment (assessment less disbursement). Each provider so notified shall remit, if applicable, the monthly net assessment to the Administrator within the period of time designated by the Administrator

RULE 4 CCR 723-41-8. ELIGIBILITY TO RECEIVE SUPPORT FROM THE COLORADO HIGH COST FUND.

723-41-8.1 A provider shall be in compliance with the Commission's rules applicable to the provision of basic local exchange service as a prerequisite for eligibility to receive support from the CHCF.

723-41-8.2 To be designated an Eligible Provider within a Geographic Support Area, a provider must file an application with the Commission.

723-41-8.2.1 Contents of Application. The application must provide evidence sufficient to establish that:

723-41-8.2.1.1 The provider is certified by the Commission to offer basic local exchange service within the Geographic Support Area;

723-41-8.2.1.2 The provider will offer basic local exchange service to all customers within the Geographic Support Area;

723-41-8.2.1.3 The provider has the managerial qualifications, financial resources, and technical competence to provide basic local exchange service throughout the specified support area regardless of the availability of facilities or the presence of other providers in the area;

723-41-8.2.1.4 The provider is not receiving funds from the CHCF or any other source that together with local exchange service revenues, exceed the reasonable cost of providing local exchange service to customers of such provider; and

723-41-8.2.1.5 The granting of the application serves the public convenience and necessity, as defined in §§ 40-15-101, 40-15-501, and 40-15-502 C.R.S.

723-41-8.2.2 Process.

723-41-8.2.2.1 The Commission will process applications in accordance with the Rules of Practice and Procedure found at 4 CCR 723-1.

723-41-8.2.2.2 An application filed pursuant to Rule 8.2 may be filed contemporaneously with an application for certification, operating authority, or alternative regulation.

723-41-8.3 A reseller may not receive support from the CHCF for customers which are served entirely through resale. Rather, the facilities-based provider may be eligible to receive any applicable CHCF support.

723-41-8.4 If a provider serves a customer *via* a combination of its facilities and another's unbundled facilities which the provider purchased at full cost, the provider may be eligible to receive the CHCF support for that customer.

723-41-8.5 CHCF support shall be portable between any Eligible Provider chosen by the end-user. The level of the support per access line paid to any Eligible Provider shall be determined pursuant to Rule 8.2.1.4.

723-41-8.6 Providers certified as a Provider of Last Resort who, on the effective date of these Rules, served only rural exchanges with ten thousand or fewer access lines shall be deemed to have met the application requirements in Rules 8.2.1.1, 8.2.1.2, 8.2.1.3, and 8.2.1.5 for the geographic support areas within their service territories as of the effective date of these Rules.

RULE 4 CCR 723-41-9. DISBURSEMENTS FROM THE COLORADO HIGH COST FUND.

723-41-9.1 The Commission shall establish Geographic Areas for the State by order. Such Geographic Areas may be revised.

723-41-9.2 The Commission shall: 1) adopt a Proxy Cost Model; and 2) publish the Proxy Cost for each Geographic Area. The Proxy Cost Model and the resultant Proxy Costs shall be updated as necessary. The Commission shall ensure that the Proxy Cost associated with basic local exchange service bears no more than its reasonable share of the joint and common costs of facilities used to provide those services.

723-41-9.3 The Commission shall, based upon the Proxy Costs, designate certain Geographic Areas of the State as Geographic Support Areas.

723-41-9.4 Each Eligible Provider shall receive monthly support from the CHCF based on: 1) the number of access lines it serves in high cost geographic support areas, as